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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 782

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL, AFL-CIO, *Petitioner*,

v.

TRANS WORLD AIRLINES, INC., *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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v.

TRANS WORLD AIRLINES, INC., *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Air Line Stewards and Stewardesses Association, International, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on December 14, 1959 (Appendix B, *infra*, p. 10a).

OPINIONS BELOW

The opinion of the court below (Appendix C, *infra*, pp. 11a-13a) is not yet reported. The opinion of the district court (R. 23-43) is reported at 173 F. Supp. 369.

JURISDICTION

The judgment of the court below was entered on December 14, 1959 (Appendix B, *infra*, p. 10a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Air Carrier Amendment to the Railway Labor Act, as amended (45 U.S.C. 181, *et seq.*), applies to a carrier by air in its relationship with employees who perform their duties on board American flag airplanes flying between the United States and foreign countries irrespective of their nationality, place hired, place based or place of flight, where both the Federal Aviation Act (72 Stat. 737) and the applicable certificate of convenience and necessity issued by the Civil Aeronautics Board authorizing the flights make compliance with the Air Carrier Amendment to the Railway Labor Act a condition of holding the certificate.

STATUTES AND TREATIES INVOLVED

The pertinent provisions of the Air Carrier Amendment to the Railway Labor Act (49 Stat. 1189, 45 U.S.C. 181, *et seq.*), of the Railway Labor Act, as amended (44 Stat. 577, as amended, 48 Stat. 926, 45 U.S.C. 151, *et seq.*), of the Interstate Commerce Act (49 U.S.C. 1, *et seq.*), of the Civil Aeronautics Act of 1938 (52 Stat. 977, 49 U.S.C. 401, *et seq.*), of the Federal Aviation Act of 1958 (72 Stat. 737, 49 U.S.C.A. 1301, *et seq.*) and of the Chicago Convention on International Civil Aviation of 1944 (61 Stat. 1185) are set forth in Appendix A, *infra*, pp. 1a-9a).

STATEMENT OF THE CASE

This is a suit brought by the Air Line Stewards and Stewardesses Association, International, AFL-CIO, hereinafter called the Association, to require Trans World Airlines, Inc., hereinafter called TWA, to bargain with the Association as the representative of those of TWA's flight stewards and hostesses who are not nationals or residents of the United States (R. 2-9). The jurisdiction of the District Court was invoked (R. 2) under the Act of June 25, 1948, c. 646, 62 Stat. 931, 28 U.S.C. 1337, conferring jurisdiction upon federal district courts of any civil action or proceeding arising under any Act of Congress regulating commerce, the cause of action asserted being one for the violation of certain provisions of the Railway Labor Act, as amended (45 U.S.C. 151, *et seq.*).

The facts as alleged in the complaint (R. 2-9) and admitted by the answer (R. 19-23) are as follows:

TWA is a Delaware corporation which, as a common carrier by air, is engaged in interstate and foreign commerce and transports mail for and is under contract with the United States Government (R. 3, 20). TWA engages in both domestic and international operations, all of which are conducted under certificates of public convenience and necessity issued by the Civil Aeronautics Board, with the approval of the President, pursuant to the terms of Title IV, Section 401, of the Civil Aeronautics Act of 1938 (49 U.S.C. 481), which insofar as here material was reenacted without change in the Federal Aviation Act of 1958 (49 U.S.C.A. 1371, *et seq.*).

TWA's flights to points outside the United States are made under a certificate of public convenience and necessity issued by the Civil Aeronautics Board

on May 16, 1957 and under an order approving change in approved service plan issued by the Civil Aeronautics Board effective September 10, 1957 (R. 4, 10-17, 21). The certificate and order authorize TWA to engage in transportation between named points in the United States and named points in Europe, Africa and Asia (R. 4, 10-17, 21). This certificate makes compliance with the Railway Labor Act a condition upon the holding of the certificate because it expressly makes the authorizations subject to the provisions of Title IV of the Civil Aeronautics Act (R. 10) and one of the provisions of this title (49 U.S.C. 481(*l*))(4)) is that compliance with the Air Carrier Amendment to the Railway Labor Act shall be a condition to the holding of a certificate of public convenience and necessity.

The Association is a labor organization composed of flight pursers, flight stewards, flight stewardesses, flight service attendants and hostesses employed by various carriers by air operating under certificates of public convenience and necessity issued by the Civil Aeronautics Board pursuant to the terms of the Civil Aeronautics Act, as amended (49 U.S.C. 401, *et seq.*) and the Federal Aviation Act of 1958 (49 U.S.C.A. 1371, *et seq.*). The Association was certified by the National Mediation Board on March 6, 1947, as the duly designated and authorized representative for the purposes of the Railway Labor Act, as amended, of all flight stewards and hostesses employed by TWA (R. 3, 9-10, 20). This certification is still in effect and is now and has at all times been accepted by the Association, TWA and the National Mediation Board as fully applicable to TWA (R. 3-4, 20). This certification by its terms certifies the Association as the representative of Flight Stewards and Hostesses em-

ployed by" TWA "for the purposes of the Railway Labor Act", in all inclusive terms without expressing any limitation based on nationality, place hired, place based or place of flight (R. 9-10).

At all times since the National Mediation Board on March 6, 1947, certified the Association, TWA has recognized and bargained collectively with the Association as the representative of all its employees within the craft or class of flight stewards and hostesses who are nationals or residents of the United States (R. 4, 20). However, TWA has refused to accede to the requests of the Association that TWA should recognize and bargain collectively with the Association as the representative of approximately fifty flight stewards and hostesses employed by TWA who are neither nationals nor residents of the United States (R. 5-7, 17-19, 21-22).[1] These flight stewards and hostesses admittedly perform all of their work for TWA on board American flag airplanes registered pursuant to Title V of the Civil Aeronautics Act of 1938, as amended, which was reenacted without material change in the Federal Aviation Act of 1958 (R. 5, 21-22).

When TWA refused to recognize and bargain collectively with the Association as the representative of those persons within the craft or class of flight steward

[1] As appears from the complaint and attached exhibits (R. 5-6, 17-18) the issue here arose because a majority of the flight stewards and hostesses employed by TWA who are neither nationals nor residents of the United States joined the Association, authorized it to represent them and urged it to handle their employment problems with TWA. Since we believe that the certification by the National Mediation Board (R. 9-10) covers these employees and TWA's refusal to recognize and bargain with the Association as their representative is based solely on the inapplicability of the Railway Labor Act (R. 19), it is immaterial that TWA neither admitted nor denied the allegation of majority (R. 22).

and hostess who were not nationals or residents of the United States, the Association filed this suit in the District Court of the United States for the Southern District of New York, alleging that by such refusal TWA had violated Section 2, First, Second, Fourth, Sixth, Seventh and Ninth of the Railway Labor Act, as amended (R. 7-8). The complaint prayed for judgment (R. 8-9):

> 1. Enjoining TWA from refusing to recognize and treat with the Association as the representative of all its flight stewards and hostesses without limitation or qualification based on any employee's citizenship, nationality, residence, place based, or national origin;
>
> 2. Requiring TWA to recognize and treat with the Association as the representative of flight stewards and hostesses who are not citizens and who are not residents of the United States; and
>
> 3. Enjoining TWA from denying flight stewards and hostesses who are not citizens or residents of the United States the same rights and privileges as are accorded by the Railway Labor Act to employees who are citizens or residents of the United States.

The Association filed a motion for judgment on the pleadings and TWA filed a cross-motion for summary judgment (R. 23). In the affidavit filed in support of the cross-motion for summary judgment TWA alleged that the flight stewards and hostesses who are not nationals or residents of the United States perform their services wholly on airplanes flying outside the United States and its territories (R. 63). From the allegations of this affidavit (R. 61-65) and from the copy of the collective bargaining agreement between TWA and the Association (R. 45-47) which was attached to this affidavit (R. 63), it appears that

TWA and the Association have treated American nationals or American residents who are based abroad and perform their services outside the United States as part of the same craft or class as it employees based or working in the United States.

The district court held that the Railway Labor Act did not apply "to employees of TWA who are foreign nationals, based abroad and flying wholly outside the continental United States and its possessions" (R. 28, 40). It accordingly held that the Association was not entitled to the relief requested and that its complaint should be dismissed (R. 23-43). On appeal to the court of appeals, the judgment of the district court was affirmed (Appendix B, *infra*, p. 10a). Both courts held that "it is an accepted canon of construction that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears" (Appendix C, *infra*, p. 12a, R. 34-35). Both courts held that no such intent appeared in the Railway Labor Act but rather the intent to limit the application of the Act to the territorial limits of the United States was shown by language which the courts construed as making the coverage of the Railway Labor Act "dependent upon the coverage of the Interstate Commerce Act" (Appendix C, *infra*, p. 13a, R. 32-33). The Interstate Commerce Act is, as the courts pointed out, indisputably limited to transportation within the United States (Appendix C, *infra*, p. 12a, R. 32).

REASONS FOR GRANTING THE WRIT

1. This case presents an important question of federal law which should be settled by this Court, namely: whether the Air Carrier Amendment to the Railway Labor Act, as amended, is limited in its application to

transportation which takes place within the territorial limits of the United States. While the decision below purports to decide merely that the Railway Labor Act does not apply to relationships between an American airline and its employees of foreign nationality who are based abroad and fly wholly outside the continental limits of the United States (Appendix C, *infra*, p. 13a), the necessary result of the decision is to cause American airlines to staff their flights beyond the territorial limits of the United States exclusively with labor paid at lower wages and working under standards below those enjoyed by American workers who are protected in collective bargaining. This is true no matter how the decision below is construed.

If the decision is read as meaning that the Railway Labor Act applies only to transportation within the United States, then American nationals lose its benefits as soon as they leave the boundaries of the United States. If the decision is read as meaning that only foreign nationals who fly beyond our national boundaries are unprotected, then American airlines will hire only the unprotected foreign national to do the flying beyond the territorial limits of the United States. Whichever is the proper construction, American workers will be forced either to submit to substandard rates of pay and working conditions when flying outside the United States or to losing all chance of employment on such flights. This Court pointed out in connection with ships at sea, that the effect of applying American laws protecting workers to only American seamen to the exclusion of foreign seamen serving on American flag ships would be "not unlikely in the long run to diminish hirings in ports of countries that take best care of their seamen." *Lauritzen* v. *Larsen*, 1953, 345 U.S. 571, 588.

The use of only foreign nationals on those segments of flights to and from the United States, which do not involve flying within the territorial limits of the United States is apparent from the record in this case. TWA's director of labor relations, in his affidavit in support of the motion for summary judgment, described American nationals as used on flights between the United States and such points as Paris, France and Rome, Italy (R. 62); foreign hostesses and pursers as used on "intermediate flights between points in Europe, Asia and Africa" (R. 63). All these "intermediate flights" have been authorized by the Civil Aeronautics Board only as segments of flights between named cities in the United States and named cities in Europe, Africa and Asia (R. 10-17). And under our treaty commitments these flights must carry primarily passengers and cargo to and from the United States, with any other passengers and cargo limited to "fill in" unused seats or space arising as part of traffic to and from the United States.[2]

Similarly the record filed in this Court in *Air Line Stewards and Stewardesses Ass'n* v. *Northwest Airlines, Inc.*, No. 429, October Term 1959, showed a displacement of American pursers and stewardesses by foreign pursers and stewardesses on flights between the United States and the Orient motivated primarily by the lower wages and longer hours of foreign nationals (Case No. 429, R. 4-5, 16-17, 29, 46-47). And again in the case of *Air Line Stewards and Stewardesses Ass'n* v. *Braniff Airways, Inc.*, now pending un-

[2] S. Rep. 1875, 84th Cong., 2d Sess., International Air Agreements, Report on Interstate and Foreign Commerce, United States Senate, pp. 7-10, 25; H. A. Wassenbergh, Post-War International Civil Aviation Policy and the Law of the Air, The Hague, Martinus Nijhoff, 1957, pp. 42-44, 53-61.

decided in the United States District Court for the Northern District of Texas, Dallas Division, Civil No. 8390, the Association has filed a suit similar to that in the instant case except that the complaint alleges, and the Braniff has made no specific denial of the allegation, that each of the foreign based pursers and hostesses as part of his or her regular course of employment flies into and out of Miami, Florida as part of each trip and performs part of his or her duties as purser or hostess while the plane is on the ground at Miami International Airport, Florida or in the air over the state of Florida. Braniff in its answer has taken the position that the Railway Labor Act has no application to these foreign nationals because they are hired and based outside the United States. The facts alleged in the complaint show that in previous years Braniff's flights outside the United States were staffed with pursers and hostesses covered by its collective bargaining agreement with the Association.

The displacement of workers protected by American laws guaranteeing collective bargaining, by workers at substandard rates as a result of the belief of carriers by air that their operations outside the territorial limits of the United States are not subject to the Railway Labor Act, has ramifications over and above the transfer of jobs on airlines from workers enjoying collectively bargained standards to those not so enjoying such standards. Displacement of sea travel by air travel means many additional persons who would otherwise have worked at collectively bargained standards on ship have in economic reality been displaced. Preliminary figures for the fiscal year ending June 30, 1959 issued by the Immigration and Naturalization Service, Department of Justice, show that

in that year 4,067,960 passengers by air arrived or departed in the United States exclusively of travel over land borders, as against 1,426,562 passengers by sea, with the percentage so traveling by air 74.[3]

2. The decision below ignored completely Section 401(k)(4) of the Federal Aviation Act of 1958, which insofar as here material is a reenactment without change, except in numbering of the subsection, of Section 401(1)(4) of the Civil Aeronautics Act of 1938. Section 401(a) of both statutes prohibits an air carrier from engaging in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation. A certificate is required for all transportation outside as well as within the United States as appears from the specifications with respect to designation of terminal and intermediate points "insofar as the operation is to take place without the United States" (Section 401(f) of the Civil Aeronautics Act and Section 401(e) of the Federal Aviation Act). Section 401(k)(4) provides:

> "It shall be a condition upon the holding of a certificate by any carrier that such carrier shall comply with Title II of the Railway Labor Act, as amended."

Title II of the Railway Labor Act is the Air Carrier Amendment.

Other paragraphs of Subsection (k) of Section 401 of the Federal Aviation Act show that Congress expressly had overseas and foreign operations in mind in connection with protecting the labor conditions of

[3] Federal Aviation Agency, FAA Statistical Handbook of Aviation, 1959 ed. (Gov't Print. Off., 1959), p. 96.

employees of air carriers. For instance Paragraph (2) of Subsection (k) of Section 401 provides:

> "Every air carrier shall maintain rates of compensation for all pilots and copilots who are engaged in overseas or foreign air transportation * * * which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States."

In addition to intrinsic evidence apparent on the face of the Federal Aviation Act itself that Congress intended to make compliance with the Railway Labor Act a condition to a certificate authorizing flights outside the United States as well as within, the legislative history shows that the primary object of including this provision was to make it possible to enforce application of the Railway Labor Act with respect to operations of American air carriers occurring beyond the territorial limits of the United States. The Air Line Pilots Association sponsored the enactment of what is now paragraph 4 of Section 401(k) of the Federal Aviation Act. Its reasons for doing so were repeatedly stated during the hearings by its then president, David L. Behncke. In the Hearings, Senate, Subcommittee of Committee on Interstate and Foreign Commerce, on S. 3659, 75th Cong., 3rd Sess., he stated (at pp. 48, 64-65):

> "Our association represents both domestic and foreign air pilots. * * *
>
> "One of the principal purposes behind this paragraph is to secure better compliance with the Railway Labor Act insofar as domestic carriers are concerned, but the principal purpose is to leave no doubt as to its applicability to foreign

operations, especially insofar as compliance is concerned."

Again in Hearings before Committee on Interstate and Foreign Commerce, Senate, on S. 3845, 75th Cong., 3d Sess., Mr. Behncke testified (at p. 293):

"The operators have objected very strenuously to the inclusion of this section, and they say that it is superfluous. The pilots disagree because this section applies not only to pilots but to all other air workers and will be especially beneficial to American pilots and other American personnel working for the Pan American and other Foreign American operations. The reason for this is a very simple one."

"It is not always possible to enforce American laws in foreign countries even though American companies are financed by American dollars. It is, however, very easy to enforce a condition of a contract or a certificate of convenience and necessity because then you combat the situation through the purse strings of the United States Treasury which is paying the bill. In other words, this provision of the pilots' proposed amendment to S. 2 makes compliance with the Railway Labor Act a condition of the holding of a certificate of convenience and necessity.

"Summarizing this means that American companies engaged in foreign operations financed by American capital will be forced to give American workers a square deal * * * The inclusion * * * would result in orderly development of the industry in both foreign and domestic operations and prevent serious labor troubles.

"* * * the pilots section will act as a bulwark both here and abroad."

To the same effect see Hearings before Committee on Interstate and Foreign Commerce, House, on H.R.

9738, 75th Cong., 2d Sess., p. 237; Hearings before Committee on Interstate and Foreign Commerce, House, on H.R. 5234, 75th Cong., 1st Sess., p. 213; Hearings Senate Subcommittee on Interstate and Foreign Commerce on S. 2, 75th Cong., 1st Sess., p. 585.

If there is any question as to the intent of Congress when it enacted the Air Carrier Amendment to the Railway Labor Act, to reach employees flying or living abroad, Congress by enacting Section 401(k)(4) of the Federal Aviation Act certainly either manifested its understanding that the Air Carrier Amendment had that reach or intended to amend it to be coextensive with the certificates of public necessity and convenience issued by the Civil Aeronautics Board. Section 401(k)(4) would result in the Civil Aeronautics Board revoking certificates for failure to comply with the Railway Labor Act in situations where the National Mediation Board had no power to apply the Act, unless the Air Carrier Amendment is construed with this breadth.

Two interrelated statutes must be construed together to give full effect to the latest expression of Congressional intent. *Southern S. S. Co.* v. *N.L.R.B.*, 1942, 316 U. S. 31. In that case this Court held that the National Labor Relations Act must be construed in a manner consistent with Federal Statutes punishing mutinies occurring on vessels in ports, rivers and harbors of foreign countries. This Court stated (at p. 47):

> "It is sufficient in this case to observe that the Board has not been commissioned to effectuate the policies of the labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose

calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."

This Court has held that the Norris-LaGuardia Act had the effect of amending the criminal provisions of the Sherman Act (*United States* v. *Hutcheson*, 1941, 312 U.S. 219) so it must either be held that the Air Carrier Amendment as originally enacted applies to employees abroad or that it was amended by Section 401(k)(4) to so apply.

Congressional committees in subsequent years have expressed their understanding that American airlines are to observe American standards of labor in their international operations. This position was recently stated by the Senate Committee on Interstate and Foreign Commerce[4] as follows:

> "The United States, as the leader of the free world, has a duty both to itself and to others to maintain a strong international air transport system, and at reasonable cost to the tax payers. Under the American system, this should be accomplished by private enterprise companies which pay salaries and wages commensurate with the American standard of living."

3. In holding that the Air Carrier Amendment to the Railway Labor Act was dependent upon the Interstate Commerce Act for a definition of its coverage, we believe the court below and the cases which it cited, are in error. We believe these courts fell into this error by using the codification instead of the original enacting statute. In order to avoid the misleading effect

[4] S. Report No. 1875, 84th Cong., 2d Sess., *op. cit.*, p. 24.

of the form codification used, we here quote the relevant portions of the Act of Congress adopting the Air Carrier Amendment (49 Stat. 1189):

> "the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as 'Title I,' is hereby further amended by inserting after the enacting clause 'Title I' and adding the following Title II:
>
> "'Title II
>
> "'Section 201. All of the provisions of title I of this Act, except the provisions of section 3, thereof are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.
>
> "'Section 202. The duties, requirements, penalties, benefits and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee', respectively in section 1 thereof.'"

Congress thus said in plain unequivocal language that the Railway Labor Act was to apply to every carrier by air engaged in foreign transportation and every employee of such carrier. It defined the group to which the Railway Labor Act was to be extended. It expressly excluded applying the definitions of "carrier" and "employee" as set forth in the Railway Labor Act to air carriers and their employees for it

stated the new group was to be included "as though" they "were specifically included within the definitions of 'carrier' and 'employee'," of the original statute. The court below nevertheless held that air carriers and their employees must be strained through the definitions of carrier and employee in the original Act (Appendix C, *infra*, p. 12a). Only by straining air carriers and their employees through the definitions of the original Railway Labor Act it is possible to reach the limitation of the Interstate Commerce Act, that only "transportation * * * within the United States" is covered. But any attempt to strain air carrier and their employees through the definitions of Section 1 of the Railway Labor Act does not lead to the result that only transportation in the United States is covered. Rather it would result in excluding all carriers by air and all employees of all carriers by air from the Railway Labor Act. Section 1, First of the Railway Labor Act provides:

> "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act. * * *"

Since no carrier by air is subject to the Interstate Commerce Act, no carrier by air would be covered by the Railway Labor Act.

Section 1, Fifth of the Railway Labor Act provides:

> "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the

authority which is conferred upon it to enter orders amending or interpreting such orders: * * *"

Since no employee or subordinate official of any carrier by air performs any work defined as that of an employee or subordinate official in any orders of the Interstate Commerce Commission now in effect, or which has ever been in effect, and since the Interstate Commerce Commission has no power to make any orders with respect to employees of carriers by air, no employee of any carrier by air would be covered by the Railway Labor Act.

When Congress went out of its way in the Air Carrier Amendment to specify that it wanted to add to the group already covered by the Railway Labor Act, the additional group composed of air carriers engaged in "foreign commerce", a phrase not present in the original Railway Labor Act, Congress by the use of the term "foreign commerce" indicated that it envisioned extending the benefits of that Act to a world wide air fleet which knew no national boundaries. To attempt to carve out, and apply the Railway Labor Act only to, a territorial segment of that world wide air operation is anachronistic. It is also out of harmony with the long line of decisions by this Court and lower federal courts holding that the Sherman Act, the Lanham Trade Mark Act and the Fair Labor Standards Act apply to business operations of American companies conducted outside the physical boundaries of the United States. *Steele* v. *Bulova Watch Co., Inc.*, 344 U.S. 280, 282, 285-286; *United States* v. *Timken Roller Bearing Co.*, 341 U.S. 593, 599, modifying 83 F. Supp. 284; *Holophone Co., Inc.* v. *United States*, 352 U.S. 903, affirming 119 F. Supp. 114; *Vermilya-*

Brown Co. v. *Connell*, 335 U.S. 377, 389-390; *United States* v. *Aluminum Co. of Am.*, 2 Cir., 1945, 148 F. 2d 416; *Ramirez & Feraud Chili Co.* v. *Las Palmas Food Co.*, S.D. Calif., 1956, 146 F. Supp. 594, affirmed 9 Cir., 235 F. 2d 874; *United States* v. *R. P. Oldham Co.*, N.D. Calif. S.D. 1957, 152 F. Supp. 818, 821-822; *United States* v. *Imperial Chemical Industries*, S.D. N.Y. 1951, 100 F. Supp. 504, 592, supplemented, 105 F. Supp. 215; *United States* v. *National Lead Co.*, S.D. N.Y. 1945; 63 F. Supp. 513, 514; *United States* v. *General Electric Co.*, S.D.N.J., 1949, 82 F. Supp. 753, 842, 847.

4. The reliance by the court below (Appendix C, *infra*, p. 12a) upon the canon of construction stated in *Foley Bros.* v. *Filardo*, 336 U.S. 281, that the coverage of a federal statute will not extend beyond our national boundaries unless such a legislative intent clearly appears, was misplaced. Rather this case falls within the principle stated by this Court in *Romero* v. *International Term. Co.*, 358 U.S. 354, 382; *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138, 143, n. 5; *Lauritzen* v. *Larsen*, 345 U.S. 571, 584-585, that Congressional enactments, in fields where the law of the flag governs, are to be applied not according to physical boundaries but according to international concepts of jurisdiction. This Court expressly rejected the necessity for a specific Congressional direction that a statute be so applied. In *Romero* this Court pointed out that the "principles on which" *Lauritzen* "was decided did not derive from the terms of that statute" (358 U.S. at 382).

We believe that there can be no doubt but what international law recognizes the right of each state to apply the law of the flag to airplanes in substantially

the same manner as it is applicable to ships at sea.[5] With respect to the law which should govern the internal economy of the aircraft, it has even been agreed that the law of the flag governs when the aircraft is standing on foreign territory during a landing, as well as when it is flying over that territory. J. M. Spaight, Aircraft in Peace and the Law (1919), pp. 129-130. Compare Draft Convention on Jurisdiction with respect to Crimes, prepared as part of the Codification of International Law by the Advisory Committee on the Research in International Law under the auspices of Harvard Law School, Supplemental 1935, 29 Am. Journal of International Law, pp. 435, 508-517; International Law Association, Report of the 33rd Conference, Stockholm, 1924, London, Sweet & Maxwell, 1925, pp. 117-118; M. Lemaine, Traite de Droit Aerien (1947), pp. 201-207, 794-800.

At the time Congress enacted the Air Carrier Amendment to the Railway Labor Act in 1936, our nation was already a party to treaties establishing the law of the flag as the governing principle in respect to allocation of jurisdiction over airplanes engaged in international transport. See for instance the Pan American Convention on Commercial Aviation signed at Havana on February 20, 1928 (47 Stat. 1903).

While none of the nations, except the United States, whose territory is flown over or landed upon, by the flights of TWA, was a party to the Pan American Convention, all of these nations are parties to the Chicago Convention on International Civil Aviation

[5] Demonstration of this point would require the listing of the innumerable statutes and treaties adopting this principle. Illustrative is the British Nationality Act of 1948, Sec. 32 (5) which provides that a person born on an aircraft shall be deemed to have been born in the place of registration of that aircraft.

of 1944 (61 Stat. 1180, 4 U.S.T. 1949) which similarly provided for the law of the flag as the basic principle for governing conduct aboard an airplane in international operations. See H. P. Honig, The Legal Status of Aircraft, The Hague, Martinus Nijhoff, 1956, pp. 100, 102-109, 136, 191.

The law of the flag as developed with respect to seagoing vessels and its applicability to labor relations between crew and ship owner have been fully set forth in recent decisions by this Court. *Romero* v. *International Term. Co.*, 358 U.S. 354, 382-384; *Lauritzen* v. *Larsen*, 345 U.S. 571, 584-585; *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138, 143, n. 5. The American cases uniformly hold that the law of the flag governs wages, hours and terms of employment. *The Belgenland*, 114 U.S. 365, 367; *The Hanna Nielsen*, 2 Cir. 1921, 273 Fed. 171, 172; *McQuade* v. *Compania de Vapores San Antonio, S.A.*, S.D. N.Y. 1955, 131 F. 365, 366-367; *Grivas* v. *Alianza Compania Armadora*, S.D. N.Y. 1957, 150 F. Supp. 708, 711-712; *Rodriquez* v. *Gerontas Compania de Navegacion*, S.D. N.Y. 1957, 150 F. Supp. 715, 718; 720-722; *Evangelinos* v. *Andreavapor Cia. Nav.*, S.A., S.D. N.Y., 1958, 162 F. Supp. 520, 521-522. The foreign seaman is "entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen." *In re Ross*, 140 U.S. 452, 472. *Cf: The Blakeley*, D.C. W.D. Wash. N.D., 1916, 234 Fed. 959, 961; *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 1950, 179 F. 2d 597; *Carroll* v. *United States*, 2 Cir., 1943, 133 F. 2d 690.

The National Labor Relations Board has applied the National Labor Relations Act to all members of crews of American owned ships of American registry. It has voted all members of the crew, including aliens, by

mail ballots conducted even in distant ports. E.g., *Cities Service Oil Co.*, 87 N.L.R.B. 324, 331. It appeared in an affidavit filed in support of a petition to enjoin the election in that case that one of the vessels was in continuous trade between two foreign ports. Affidavit of M. J. Adkins, Marine Superintendent of Cities Service Oil Co., p. 3, filed in *Cities Service Oil Co.* v. *Douds*, U.S. D.C. S.D. N.Y. Civ. 49-229. The employees on this ship were voted by mail in a distant port. 87 N.L.R.B. at 326, n. 5, 327, n. 6, 330, n. 12.

CONCLUSION

In the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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